

RECIPROCAL TRADE

*Agreement and exchange of notes signed at Washington February 2, 1935*¹

Approved and confirmed by the President of the United States March 6, 1935

Ratified by Brazil November 30, 1935

Approval and ratification exchanged at Rio de Janeiro December 2, 1935

Proclaimed by the President of the United States December 2, 1935

Entered into force January 1, 1936

Rendered inoperative (except for provisions of article XIV relating to termination upon six months' notice) by agreement of June 30, 1948,² for such time as both countries are parties to the General Agreement on Tariffs and Trade³

Terminated June 19, 1958⁴

49 Stat. 3808; Executive Agreement Series 82

AGREEMENT

The President of the United States of America and the President of the Republic of the United States of Brazil, desiring to strengthen the traditional bonds of friendship between the two countries; to give effect to the principles embodied in the Resolution on economic, commercial and tariff policies approved on December 16, 1933, by the Seventh International Conference of American States; and to supplement the principle of equality embodied in the Exchange of Notes signed October 18, 1923,⁵ by granting mutual and reciprocal advantages for the promotion of trade between the two countries, as well as for the expansion of international trade, have resolved to conclude a Trade Agreement, and for that purpose have appointed their plenipotentiaries, as follows:

The President of the United States of America: Mr. Cordell Hull, Secretary of State of the United States of America, and

¹ For schedules annexed to agreement and related exchange of notes of Apr. 17, 1935, see 49 Stat. 3822 and 3834 or pp. 16 and 30 of EAS 82.

² TIAS 1811, *post*, p. 1048.

³ TIAS 1700, *ante*, vol. 4, p. 641.

⁴ Pursuant to notice of termination given by Brazil Dec. 18, 1957.

⁵ TS 672, *ante*, p. 829.

The President of the Republic of the United States of Brazil: Senhor Oswaldo Aranha, Ambassador Extraordinary and Plenipotentiary of the Republic of the United States of Brazil to the Government of the United States of America;

Who, after having exchanged their full powers, found to be in good and due form, have agreed upon the following articles:

ARTICLE I

The United States of America and the United States of Brazil will grant each other unconditional and unrestricted most-favored-nation treatment in all matters concerning customs duties and subsidiary charges and in the method of levying duties, and, further, in all matters concerning the rules, formalities, and charges imposed in connection with the clearing of goods through the customs.

Accordingly, natural or manufactured products having their origin in the United States of America or the United States of Brazil shall in no case be subject in the other country, in regard to the matters referred to above, to any duties, taxes, or charges other or higher, or to any rules or formalities other or more burdensome, than those to which the like products of any third country are or may hereafter be subject.

Similarly, natural or manufactured products exported from the territory of the United States of America or the United States of Brazil and consigned to the territory of the other country shall in no case be subject with respect to exportation and in regard to the above-mentioned matters, to any duties, taxes, or charges other or higher, or to any rules or formalities other or more burdensome, than those to which the like products when consigned to the territory of any third country are or may hereafter be subject.

Any advantage, favor, privilege, or immunity which has been or may hereafter be granted by the United States of America or the United States of Brazil in regard to the above-mentioned matters, to a natural or manufactured product originating in any third country or consigned to the territory of any third country shall be accorded immediately and without compensation to the like product originating in or consigned to the territory of the United States of Brazil or the United States of America, respectively.

ARTICLE II

1. No prohibitions, import or customs quotas, import licenses or any other form of quantitative restriction or control shall be imposed by the United States of Brazil on the importation or sale of any article the growth, produce or manufacture of the United States of America enumerated and described in Schedule I annexed to this Agreement ⁶ and made a part thereof,

⁶ See footnote 1, p. 849.

nor by the United States of America on the importation or sale of any article the growth, produce or manufacture of the United States of Brazil enumerated and described in Schedule II annexed to this Agreement and made a part thereof: Provided, That the foregoing provision shall not apply to prohibitions or restrictions (a) related to public security; (b) imposed on moral or humanitarian grounds; (c) designed to protect human, animal, or plant life, subject to the provisions of Article X; (d) related to prison-made goods; (e) related to the enforcement of police or revenue laws; or (f) permitted by paragraph 2 of this Article.

2. The provisions of the first paragraph of this Article shall not apply to any quantitative restriction imposed by the United States of America or the United States of Brazil on the importation or sale of any article the growth, produce or manufacture of the other country in conjunction with governmental measures operating to regulate or control the production, market supply, or prices of like domestic articles: Provided, That before any quantitative restriction on importation under the foregoing provisions of this paragraph is established, or having been established, is materially changed, the Government of the country which proposes to establish or materially change such restriction shall give notice thereof in writing to the other Government and shall accord the latter Government thirty days from the receipt of such notice to examine such proposed restriction or change; and Provided further, That in the event such other Government objects to such proposed restriction or change, and if an agreement is not reached by the end of the thirtieth day following receipt of the notice of the intention to establish or change such restriction, the Government which proposes to take such action shall be free to do so at any time thereafter, and the other Government shall be free within fifteen days after the imposition of such restriction or change to terminate this Agreement on thirty days' notice.

3. The present Agreement being based on the principle of unconditional most-favored-nation treatment, the United States of America and the United States of Brazil agree that, if either Government should establish or maintain any form of quantitative restriction or control of the importation of any article or of the sale of any imported article the growth, produce or manufacture of the other country, it will give the widest possible application to the most-favored-nation principle and will administer any such prohibition or restriction in such a way as not to discriminate against the commerce of the other country. To this end it is agreed:

(a) That neither the United States of America nor the United States of Brazil shall establish or maintain any prohibition or quantitative restriction on the importation or sale of any article the growth, produce or manufacture of the other country which is not applied to the importation or sale of any like article the growth, produce or manufacture of any third country;

(b) That, in the event of a quantitative restriction being established by the United States of America or the United States of Brazil, on the importation or sale of any article with respect to which the other country has an interest, the total permitted importation of such article, unless otherwise mutually agreed, shall be allotted among exporting countries, and in such allotment the United States of America or the United States of Brazil, as the case may be, will grant to the other country a share of the permitted importation equivalent to the proportion of the total importation of such article which the other country supplied during a previous representative period;

(c) That, in the event that the United States of America or the United States of Brazil shall impose a lower import duty or charge on the importation or sale of a specified amount of any article with respect to which the other country has an interest than that applied to importations in excess of such amount, the total importation permitted at such lower duty or charge, unless otherwise mutually agreed, shall be allotted among exporting countries, and in such allotment the United States of America or the United States of Brazil, as the case may be, will grant to the other country a share equivalent to the proportion of the total importation of the article in question which the latter country supplied during a previous representative period.

4. Neither the United States of America nor the United States of Brazil shall regulate by import licenses or permits issued to individuals or organizations, the quantity of importations into its territory or sales therein of any article the growth, produce or manufacture of the other country, unless the quantity of permitted imports of such article, during a quota period of not less than three months, shall have been previously established, and unless the regulations covering the issuance of such licenses or permits shall be made public before they are put into force.

5. In the event of a quantitative restriction being established by the United States of America or the United States of Brazil for the importation into or sale in its territory of any article the growth, produce or manufacture of the other country, or in the event that either country shall impose a lower duty or charge on a specified amount of any such article than that applied to importations in excess of such amount, it is agreed that the United States of America or the United States of Brazil, as the case may be,

(a) shall give public notice of the total amount of such article permitted to be imported or sold, or the amount of such article to which such lower duty or charge is applied;

(b) shall give public notice of the allotments to exporting countries, in the event that the total quantity of such article permitted to be imported or sold, or permitted entry or sale at such lower duty or charge, is allotted among exporting countries, and shall at all times upon request advise the Government of the other country of the amount of any such article the growth, produce or manufacture of each exporting country which has been

imported or sold or for which licenses or permits for importation or sale have been granted;

(c) shall at all times give sympathetic consideration to any representations which the Government of the other country shall make to the effect that such restriction or imposition of duty or charge, or the administration thereof, is prejudicial to its trade.

ARTICLE III

Articles the growth, produce or manufacture of the United States of America, enumerated and described in Schedule I annexed to this Agreement and made a part thereof, shall, on their importation into the United States of Brazil, if now free of duty, continue to be exempt from ordinary customs duties or, if now dutiable, shall be exempt from ordinary customs duties in excess of those set forth in the said Schedule. All of the said articles enumerated and described in Schedule I shall be exempt also from all other duties, taxes, fees, charges or exactions, imposed on or in connection with importation, in excess of those imposed or required to be imposed by laws of the United States of Brazil in effect on the day of the signature of this Agreement.

ARTICLE IV

Articles the growth, produce or manufacture of the United States of Brazil, enumerated and described in Schedule II annexed to this Agreement and made a part thereof, shall, on their importation into the United States of America, if now free of duty, continue to be exempt from ordinary customs duties or, if now dutiable, shall be exempt from ordinary customs duties in excess of those set forth in the said Schedule. All of the said articles enumerated and described in Schedule II shall be exempt also from all other duties, taxes, fees, charges, or exactions, imposed on or in connection with importation, in excess of those imposed or required to be imposed by laws of the United States of America in effect on the day of the signature of this Agreement.

ARTICLE V

In the event that either the United States of America or the United States of Brazil establishes or maintains an official monopoly or centralized agency for the importation of or trade in a particular commodity, the Government establishing or maintaining such monopoly or centralized agency will give sympathetic consideration to all representations that the other Government may make with respect to alleged discriminations against its commerce in connection with purchases by such official monopoly or centralized agency.

ARTICLE VI

The two Governments agree that if they shall establish or maintain a control of the foreign exchanges, they will accord to the nationals and commerce of each other the most general and complete application of the unconditional most-favored-nation principle.

The provisions of this Article may be terminated by either Government on sixty days' written notice.

ARTICLE VII

All articles the growth, produce or manufacture of the United States of America or the United States of Brazil, shall, after importation into the other country, be exempt from all internal taxes, fees, charges or exactions other or higher than those payable on like articles of national origin or any other foreign origin, except as required by laws of either country in effect on the day of the signature of this Agreement.

Articles the growth, produce or manufacture of the United States of America or the United States of Brazil enumerated and described in Schedules I and II, respectively, after importation into the other country, shall be exempt from any national or federal internal taxes, fees, charges or exactions other or higher than those imposed or required to be imposed by laws of the United States of Brazil and the United States of America, respectively, in effect on the day of the signature of this Agreement, subject to constitutional requirements.

ARTICLE VIII

Laws, regulations of administrative authorities and decisions of administrative or judicial authorities of the United States of America and the United States of Brazil, respectively, pertaining to the classification of articles for customs purposes or to rates of duty shall be published promptly so that traders may become acquainted with them.

No administrative ruling by the United States of America or the United States of Brazil effecting advances in rates of duties or charges applicable under an established and uniform practice to imports originating in the territory of the other country, or imposing any new requirement with respect to such importations, shall be effective retroactively or with respect to articles either entered for or withdrawn for consumption prior to the expiration of thirty days after the date of official publication of notice of such ruling. The provisions of this paragraph do not apply to administrative orders imposing anti-dumping duties, or relating to sanitation or public safety, or giving effect to judicial decisions.

ARTICLE IX

The United States of America and the United States of Brazil retain the right to apply such measures as they respectively may see fit with respect to the control of the export or sale for export of arms, munitions, or implements of war, and, in exceptional circumstances, of other material needed in war.

ARTICLE X

The Government of the United States of America or the Government of the United States of Brazil, as the case may be, will accord sympathetic consideration to such representations as the other Government may make regarding the operation of customs regulations, the observance of customs formalities, and the application of sanitary laws and regulations for the protection of human, animal, or plant life.

In the event that the Government of either country makes representations to the Government of the other country in respect of the application of any sanitary law or regulation for the protection of human, animal, or plant life, and if there is disagreement with respect thereto, a committee of technical experts on which each Government shall be represented shall, on the request of either Government, be established to consider the matter and to submit recommendations to the two Governments.

Whenever practicable each Government, before applying any new measure of a sanitary character, will consult with the Government of the other country with a view to insuring that there will be as little injury to the commerce of the latter country as may be consistent with the purpose of the proposed measure. The provisions of this paragraph do not apply to action affecting individual shipments under sanitary measures already in effect or to actions based on pure food and drug laws.

ARTICLE XI

The advantages now accorded or which may hereafter be accorded by the United States of America or the United States of Brazil to other adjacent countries in order to facilitate frontier traffic, and advantages resulting from a customs union to which either country may become a party shall be excepted from the operation of this Agreement; and this Agreement shall not, subject to the provisions of Article X, apply to police or sanitary regulations or to the commerce of the United States of America with the Republic of Cuba, or to commerce between the United States of America and the Panama Canal Zone, the Philippine Islands, or any territory or possession of the United States of America, or to the commerce of the territories and possessions of the United States of America with one another.

Except as otherwise provided in the third paragraph of this Article, the provisions of this Agreement relating to the treatment to be accorded by the United States of America and the United States of Brazil, respectively, to the

commerce of the other country shall not apply to the Philippine Islands, the Virgin Islands, American Samoa, the Island of Guam, or to the Panama Canal Zone.

Subject to the reservations set forth in the first paragraph of this Article the provisions of Article I, and the provisions for most-favored-nation treatment in Articles II and VI shall apply to articles the growth, produce or manufacture of any area under the sovereignty or authority of either country imported from or exported to any area under the sovereignty or authority of the other country. It is understood, however, that the provisions of this paragraph do not apply to the Panama Canal Zone.

ARTICLE XII

The present Agreement shall, from the date on which it comes into force, supplant the agreement by exchange of notes signed by the United States of America and the United States of Brazil on October 18, 1923.

ARTICLE XIII

The United States of America and the United States of Brazil, animated by their traditions of amity and by the spirit which impelled them to enter into this Agreement, declare their intention of studying the possibility of concluding other agreements designed to improve and strengthen their present relations, their trade interchange, their maritime, aerial and postal connections, with a view to bringing still closer together the peoples of the two nations. With this end in view, the competent branches of the two Governments will, on the first opportunity, exchange ideas on the most rapid and efficient ways of increasing trade interchange between the two countries through mutual and reciprocal concessions by each country to the products of the other or through transport, credit, or other facilities, with a view to developing the relations between them, and will endeavor to carry into effect to the greatest possible extent the recommendations and suggestions which will have been found suitable to this purpose.

ARTICLE XIV

The present Agreement shall be approved and confirmed by the President of the United States of America by virtue of the Act of the Congress of the United States of America approved June 12, 1934, entitled "An Act to amend the Tariff Act of 1930",⁷ and shall be ratified by the President of the Republic of the United States of Brazil in accordance with the constitutional requirements of that country. It shall enter into full force thirty days after the exchange of the instrument of approval and confirmation and the instrument of ratification, which shall take place in the city of Rio de Janeiro, as soon as possible, and shall continue in force for two years, unless terminated in accordance with the provisions of Article II.

⁷ 48 Stat. 943.

Unless at least six months before the expiration of the above-mentioned term of two years the Government of either country shall denounce the Agreement, it shall continue in full force until denounced by either Government with six months' previous notice, or unless terminated in accordance with the provisions of Article II.

In witness thereof the respective Plenipotentiaries have signed this Agreement in duplicate, each in the English and Portuguese languages, and have affixed their seals hereto.

Done at the City of Washington, this second day of February, one thousand nine hundred and thirty-five.

CORDELL HULL [SEAL]
OSWALDO ARANHA [SEAL]

[For schedules annexed to agreement, see 49 Stat. 3822 or p. 16 of EAS 82.]

EXCHANGE OF NOTES

The Brazilian Ambassador to the Secretary of State

[TRANSLATION]

EMBASSY OF THE
UNITED STATES OF BRAZIL

No. 11

WASHINGTON, *February 2, 1935*

MR. SECRETARY OF STATE:

Animated with the purpose of making article VI of the trade agreement between Brazil and the United States of America, signed today, perfectly clear, my Government has authorized me to advise Your Excellency that, so long as there may be any need for it to maintain the present control over foreign exchange, it interprets the promise contained in the said article as follows:

I. The Bank of Brazil will furnish sufficient exchange for the payments, as they become due, for all future importations of American products into Brazil; moreover, the Bank of Brazil will provide sufficient foreign exchange for the gradual liquidation of the American commercial debts now in arrears, it being understood that the Bank of Brazil will establish a system of payment under which the amount of foreign exchange required for the purposes mentioned shall not be less than a percentage calculated in accordance with the share represented by American goods in total Brazilian imports during the past 10 years, but slightly increased in order that the purposes contemplated by the new trade agreement may be accomplished;

II. With respect to transfers of profits and dividends of American companies operating in Brazil, my Government cannot, until the situation becomes normal, do more than promise that such companies will receive

treatment never less favorable than that which is enjoyed or which may be enjoyed by any foreign companies established in the country;

III. My Government suggests the cooperation of the Bank of Brazil with the Federal Reserve Board of New York (or any other institution which the Government of the United States of America may indicate), in the sense of inaugurating a foreign exchange information service, affording greater knowledge of the situation of each of the two countries with relation to the other and, in this way, intensifying the exchange of products between them;

IV. If, as it hopes, the negotiations in progress for obtaining banking credits should come to a happy conclusion, the Brazilian Government will reserve from the foreign exchange at its disposal that necessary to meet the payment, to the holders of bonds of loans negotiated in the United States of America, of the sums fixed by the plan of February 5, 1934, for payment of debts.

I wish to add that the Bank of Brazil will continue to meet, as hitherto, the obligations assumed in June 1933 for the refunding of the deferred commercial debts in arrears existing at that time.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

OSWALDO ARANHA

His Excellency

MR. CORDELL HULL

Secretary of State of the United States of America

The Secretary of State to the Brazilian Ambassador

DEPARTMENT OF STATE
WASHINGTON, February 2, 1935

EXCELLENCY:

I have the honor to acknowledge the receipt of Your Excellency's note of this date.

My Government welcomes the declaration of the Government of Brazil contained in Your Excellency's note under acknowledgment in connection with the arrangements for the development of trade between the United States and Brazil embodied in the new Commercial Agreement between the two countries and has taken note of the determination of the Government of Brazil to resolve in so satisfactory and orderly a manner matters involving foreign exchange between the two countries.

The security in exchange matters these assurances will give to trade between the two countries should greatly assist in the development of that trade. They appear to this Government to be both reasonable and moderate

and in no way to obstruct such plans or efforts as the Brazilian Government may wish to carry forward in furthering a liberal exchange policy.

Your Excellency will, of course, appreciate that the proffer by Your Excellency's Government of these assurances as contained in Your Excellency's note above referred to is not construed by this Government as modifying or affecting in any way the rights of American holders of Brazilian bonds issued in the United States.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

CORDELL HULL

His Excellency

Mr. OSWALDO ARANHA

Ambassador of Brazil